

HOUSE BILL 2728
By Head

AN ACT to amend Tennessee Code Annotated, Section 65-5-209, relative to protection of Tennessee consumers of telecommunications services from excessive charges by incumbent local exchange telephone companies in the absence of effective competition, by imposing conditions for price regulation plans, by requiring the refund of excessive charges, and by providing for the regulation of the rates of such companies not meeting the required conditions.

WHEREAS, in adopting Chapter 408 of the Public Acts of 1995, the General Assembly adopted a declaration of telecommunications services policy which is codified in Tennessee Code Annotated Section 65-4-123:

The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers. To that end, the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider; universal service shall be maintained; and rates charged to residential customers for essential telecommunications services shall remain affordable;

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WHEREAS, Section 15 of Chapter 408, Public Acts of 1995, Tennessee Code Annotated, Section 65-5-211, provided that the General Assembly shall evaluate the implementation of Acts 1995, Chapter 408, every two years and required the Tennessee Regulatory Authority to submit a report containing information necessary for proper oversight and evaluation; and

WHEREAS, the Tennessee Regulatory Authority submitted its first required two-year report dated June 5, 1997, which shows, among other things, that few Tennesseans have the opportunity to select a competing telephone company for local service since the passage of Chapter 408; and

WHEREAS, the system of regulation of local exchange telephone companies in effect prior to the passage of Chapter 408 facilitated and encouraged the development of effective monopolies in the provision of local telephone service by incumbent local exchange telephone companies; and

WHEREAS, the customers of incumbent local exchange telephone companies can be protected against excessive rates only by an effective and fair system of regulation or by the presence of effective competition; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-5-209, is amended by adding at the end thereof, the following new subsection (i):

(i) Notwithstanding any other provision of law to the contrary, no incumbent local exchange telephone company shall be entitled to implement or continue a price regulation plan for such company, when that company's earned rate of return as shown on its Tennessee Regulatory Authority 3.01 Reports exceeded twelve percent (12%) for the calendar years of 1996 and 1997, unless such company shall agree: (i) that the initial rates on which its price regulation plan is based shall be set by the authority after a contested, evidentiary proceeding in which that company's fair rate of return on the

company's rate base shall be determined by the authority pursuant to Tennessee Code Annotated, Section 65-5-201; and (ii) that the company will refund in the form of a check to its customers, by the date and in the manner to be determined by the authority, all excessive earnings it has received since June 6, 1995. For the purpose of this subsection (i) earnings are deemed excessive which exceed such company's latest current authorized fair rate of return for the particular period in which those earnings were received; and (ii) the making of such funds shall not affect the company's liability for state and local taxes. Any such company which fails to agree to the conditions imposed in this subsection shall be subject to rate base rate of return regulation until such time as the authority determines that such company, in the provision of basic local exchange telephone service, is subject to such competition as will constitute an effective regulation of its rates, as determined by the authority. The authority shall give priority to the expeditious disposition of proceedings pursuant to this subsection.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.